

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
)	

**COMMENTS OF XO COMMUNICATIONS AND NUVOX COMMUNICATIONS
IN SUPPORT OF THE PETITION FOR RECONSIDERATION/CLARIFICATION
AND/OR WAIVER BY COMPTel**

XO Communications (“XO”) and NuVox Communications (“NuVox”) (“Joint Commenters”), pursuant to 47 C.F.R. § 1.429, by their attorneys, submit these comments in support of the Petition for Reconsideration/Clarification And/Or Waiver by Comptel.¹ The *Comptel Petition* seeks to have the Commission either reconsider and/or clarify the *VOIP E911 Order*² (or grant a waiver) to eliminate the customer notification and warning requirements in such Order³ for a narrow class of VOIP services – those providing interconnected, non-nomadic voice services using IP transmission protocol to business customers via T1 facilities/circuits. The rationale for such request is sound: the voice services and the accompanying E911 service offered on T1 facilities/circuits using either analog or IP transmission technology are functionally equivalent. As such, business customers using either technology receive E911

¹ Petition for Reconsideration/Clarification and/or Waiver By Comptel, WC Docket Nos. 04-36, 05-196, July 29, 2005 (“*Comptel Petition*”).

² In the Matter of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers, WC Docket Nos. 04-36, 05-196, FCC 05-116, 36 CR 1 First Report and Order and Notice of Proposed Rulemaking, (rel. June 3, 2005) (“*VOIP E911 Order*”).

³ 47 C.F.R. §9.5(e).

service today, and their expectation about such service and its limitations are identical for either technology. Consequently, there is no reason to increase the regulatory burden on service providers. Finally, the Joint Commenters believe that the Commission has already addressed its concern in language in the Scope Section⁴ of the *VOIP E911 Order*, and therefore any Commission action here would be merely a clarification.

I. XO AND NUVOX: THEIR TDM AND IP COMMUNICATIONS SERVICES OVER T1 FACILITIES

A. XO

XO is a full service telecommunications provider serving business customers throughout the United States. XO offers a complete set of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking, Ethernet, Wavelength, Web Hosting and integrated voice and data services. XO provides service through its facilities-based broadband networks and Tier One Internet peering relationships. XO currently offers facilities-based broadband telecommunications services within and between more than 70 markets throughout the United States. XO is authorized by the FCC to provide interstate and international telecommunications services and, through one or more of its subsidiaries, is authorized to provide intrastate interexchange services virtually nationwide, and is authorized to provide competitive local exchange services in 47 states.

XO's primary product is a TDM based integrated voice and data service – using an integrated access device (“IAD”) located at the customer's premises -- provided over T1 facilities to business customers. About one year ago, XO introduced an IP, non-nomadic variation of this product. This product (IP-based Integrated Access) converts a customer's TDM calls to IP at the IAD – which, as with the TDM service, is located at the customer's premises.

⁴ *VOIP E911 Order* at n.78.

The IP call's signalling is then routed to one of two Applications Servers (located in either a Chicago or Dallas XO central office) and then to a softswitch policy server, of which there are eight around the country. The media packets are routed over the XO IP network to the softswitch gateway, generally collocated with XO's TDM switch, at the remote end of the call. Other variations of IP products are in the planning stages.

For all of these products, XO provides E911 service – a service that is fully compliant with §§ 9.5 (a)-(c)⁵ of the Commission Rules (newly adopted in the *VOIP E911 Order*). For the IP products, it provides such service by routing these calls from its softswitch to a Class 5 end office switch – which has been used to route TDM based calls. The E911 call is then sent via traditional E911 trunking to the PSAP using ALI database architecture. It is important to note for either a TDM based or IP based T1 service, E911 -- or for that matter any -- services will not function when there is an electrical outage and thus, from the customer's viewpoint for that aspect of the service, they are functionally equivalent.

B. NuVox

NuVox is a facilities-based integrated communications provider serving 16 states in the Midwest and Southeast. It offers a full array of communications services to small, medium, and large business customers. Its main product, FLEXLinx, is a TDM based service offered over T1 facilities, which bundles together local and long distance voice service, dedicated high-speed Internet access, web hosting, email, and other complementary services. NuVox also recently introduced a VOIP service – VoxIP – which is similar to XO's non-nomadic, T1 IP service delivered through an IAD located at the customer's premises. As with XO, it currently provides FCC compliant E911 service with its TDM and IP products.

⁵ Because XO's T1 IP service is not mobile, § 9.5(d) of the rules is not applicable.

II. SCOPE OF THE *VOIP E911 ORDER*: CLARIFYING IT DOESN'T APPLY TO THE T1 IP SERVICES OF XO AND NUVOX

In the *VOIP E911 Order*, the Commission seeks to implement the laudable objective of ensuring that all citizens by dialing 911 over interconnected VOIP services can reach emergency services directly and efficiently. The Order requires that interconnected VOIP providers first notify customers of the extent of their current E911 capabilities and obtain customer confirmation⁶ and then, within 120 days of the July 29, 2005, provide full E911 capabilities⁷.

At the heart of the *VOIP E911 Order*, the Commission seeks to meet customer expectations about availability of E911 service by ensuring that new voice services that are functionally equivalent to current analog voice offerings adhere to the same E911 requirements. As the Commission states, “Our decisions in this Order **simply extend** our longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans (emphasis added).”⁸ The Commission then goes on to state that the basis for this decision is that “the American public has developed certain **expectations** with respect to the availability of 911 and E911 emergency services **via certain classes of communications devices** (emphasis added).”⁹ The Commission elaborates on this holding: “Indeed, one of the criteria the Commission identified in the *E911 Scope Order* as relevant to determining whether particular entities should be subject to some form of 911/E911 regulation was whether customers using the service or device have a reasonable expectation of access to 911 and E911 services.”¹⁰

⁶ 47 C.F.R. §9.5(e).

⁷ 47 C.F.R. §9.5(b)-(d).

⁸ *VOIP E911 Order* at ¶5.

⁹ *Id.* at ¶6.

¹⁰ *Id.* at n.16.

These holdings provide the foundation for the Commission's definition of an interconnected VOIP service, which is characterized by the following:

- (1) the service enables real-time, two-way voice communications;
- (2) the service requires a broadband connection from the user's location;
- (3) the service requires IP-compatible CPE; and
- (4) the service offering permits users generally to receive calls that originate on the PSTN *and* to terminate calls to the PSTN.¹¹

The Commission then refines this definition -- consistent with the objective of meeting customer expectations -- to exclude certain classes of communications services. Footnote 78 of the *VOIP E911 Order* provides that: “The rules we adopt today apply to interconnected VOIP services **rather than the sale or use of IP-compatible CPE, such as an IP-PBX, that itself uses other telecommunications services or VOIP services to terminate traffic to and receive traffic from the PSTN** (emphasis added).” The clear basis for this statement is that customers who take services under these particular circumstances already have an expectation about E911 service (and its limitations) and this Order should maintain that expectation. Therefore, IP product offerings with these specific characteristics are not included within the definition of interconnected VOIP service.

The language in footnote 78 covers the precise set of circumstances that apply to the T1 IP offerings of the Joint Commenters. Both the XO and NuVox IAD products involve the use or sale of “IP-compatible CPE” – in these specific instances an IAD -- and “other telecommunications services or VOIP services to terminate traffic from the PSTN.” As stated earlier, there is a sound technical basis for not including the XO T1 IP services within the

¹¹ *Id.* at ¶24.

definition of interconnected VOIP service: customers of XO's and NuVox's T1 TDM services understand that all services, including E911, will not operate if the power is cut (or the IAD moved), and this situation is the same for customers using their T1 IP services. It is for that reason that the Joint Commenters believe the *Comptel Petition* request for a clarification should be granted and T1 IP service offerings like they provide should be exempt from the notification and warning requirements in § 9.5(e) of the *VOIP E911 Order*.

Should the Commission determine that the language in footnote 78 is ambiguous as to its applicability to XO's and NuVox's T1 IP offerings, the Joint Commenters urge that the Commission grant the *Comptel Petition's* request pursuant to Reconsideration or waiver and order that T1 IP service offerings like those provided by them are exempt from the notification and warning requirements of the VOIP E911 Order. There are many reasons for such a decision. First, as stated above, it would maintain customer expectations about E911 service provided over T1 facilities. Second, customers of T1 services already are informed, because of the inherent nature of the service, about the provision of E911 service and its limitations. Third, as a result of current practices, a new notification and warning requirement would impose additional and unnecessary costs on providers of such services.

III. CONCLUSION

The Joint Commenters thus request that the Commission grant the *Comptel Petition's* request for reconsideration/clarification that § 9.5(e) of the Commission Rules – the customer notification and warning requirements adopted in the VOIP E911 Order – not apply to non-nomadic VOIP services to business customers over T1 facilities/circuits. Such a ruling would further the Commission's objectives of ensuring customer's E911 expectations are met while lessening regulatory burdens.

Respectfully submitted,

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